

THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.1233 of 2004

Date of Decision: 15 - 9 - 2006

Jaideep Garg

.....Petitioner

v.

Smt.Kiran Gupta and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

Present: Mr.Lekh Raj Sharma, Advocate
for the petitioner.

Mr.Harkesh Manuja, Advocate
for respondent No.1.

P.S.PATWALIA, J.

The present revision petition has been filed against order dated 18.12.2003 whereby an application moved by the petitioner, defendant No.4 in the suit, for production of original vouchers dated 13.9.1996 and 16.9.1996 from the Bank of Baroda and their retention in Court so as to be examined by a Document Expert has been dismissed.

Respondent No.1 in this revision petition Smt.Kiran Gupta filed a suit for possession by way of specific performance of agreements dated 16.5.1996, 15.5.1996, 23.5.1996 and to direct the defendants to execute and get registered the sale deeds of land mentioned in the aforementioned agreements in favour of the plaintiff. In the suit it has been mentioned that on 13.9.1996 a sum of Rs.3.5 lacs was paid to the defendants through their general power of attorney and again on 16.9.1996 another sum of Rs.2.5 lacs was paid by the plaintiff to the defendants

through their general power of attorney. In response to these averments defendants 1 to 4, 6 and 7 in their written statement have averred as hereunder:-

“8. That the contents of para no.8 of the plaint are totally wrong and hence denied. It is wrong to suggest that a total sum of Rs.10,10,000/- was paid to the defendants. The answering defendants or their general attorney Shri S.K.Garg has never received the alleged amount of Rs.2,00,000/- (Rupees two lacs only). Moreover the defendant No.5 Anuj Kumar was never authorised to receive any money or to issue receipts on behalf of the answering defendants. The specific reply regarding allegations made in this para can only be given by the defendant Anuj Kumar. However to the best of the knowledge of answering defendants neither any money was deposited by the plaintiff in the firm account of M/s Garg Fruit Processors nor Mr.Anuj Kumar gave anything in writing on the bank voucher. Rather the plaintiff had no concern with Shri Anuj Kumar or his firm M/s Garg Fruit Processor. Even in the present suit all the defendants including Shri Anuj Kumar are addressed and served through said General Attorney Shri S.K.Garg.”

Defendant No.5 has averred as hereunder:-

“8. That the contents of para no.8 of the plaint are totally wrong and hence denied. The plaintiff has no concern with the account of M/S. Garg Fruit Processors Jagadhri. The answering defendant did not receive the sum of Rs.2,00,000/- on 17-09-1996 from the plaintiff as alleged in this para. No such money was deposited by the plaintiff in the firm account of the answering defendant. The alleged writing on the bank voucher is a forgery committed by the plaintiff and her husband Shri Rakesh Gupta in connivance with some bank officials. The answering defendant has already brought the matter to

the notice of the bank officials and the Hon'ble Banking Ombudsman regarding this forgery and requested them to institute a criminal case against the forgerers. The FIR in this regard has already been registered. Therefore the question of payment of Rs.10,00,000/- to the defendants does not arise at all. It is further submitted that the answering defendants never dealt directly with the plaintiff always through his General Attorney and even in the present suit the answering defendant has been addressed and served through the said General Attorney Shri S.K.Garg.”

A reading of the aforementioned averments would show that specific allegations have been made that forgery was committed by the plaintiff on the Bank vouchers.

When these vouchers were produced in the plaintiff's evidence and copies of the same exhibited the defendants had requested the Court to impound the same so that they could be examined by the Document Expert. It is the contention of the petitioner that this was declined as the defendants could have called for these vouchers in their evidence. It was therefore at the stage of leading the evidence of the defendants that they filed the present application.

The application has been declined by the trial Court with the following observations:-

“An appraisal of case file shows that the applicant/defendant has filed a protest petition against the plaintiff which is Ex.D-14, against the cancellation report of FIR No.13 dated 1`2.1.2000, under section 420/120-B of Indian Penal Code, P.S. City Jagadhri. The applicant may agitate this ground of forgery in the protest petition, which he alleged to have file against the plaintiff. This suit is simpliciter for seeking possession by way of specific performance of the agreement to sell and the ground advanced by the applicant/defendant by way of moving this application, is of criminal

nature and by moving this application, the defendant wants to deviate the very object of the present suit, as in his written submissions, the applicant/defendant has alleged that act of forgery itself is sufficient cause for registration of a FIR and since he has already got registered a FIR against the plaintiff, therefore, I do not find any ground to allow this application as the applicant/defendant is separately fighting this cause in the criminal case and since this application is barred under section 151 of Indian Evidence Act, therefore, I hereby dismiss the application filed by applicant/defendant for impounding the vouchers dated 13.9.1996 and 16.9.1996.”

Having gone through the application, I am of the opinion that there is a definite allegation made by the defendants in the suit that the plaintiff has committed a forgery in connivance with the officials of the Bank in the aforesaid vouchers. This would be a good ground of defence in the suit as well. Since the photostat copies are already on the file of the Court, I am of the opinion that the interest of justice would require that the defendants are permitted to get the originals produced and retained in the Court till the same are examined by a Document/Handwriting Expert so as to determine the truthfulness of the allegations made by the defendants.

For the reasons aforementioned, this revision petition is allowed and order dated 18.12.2003 dismissing the application filed by the defendant-petitioner is set aside. The Court would permit the defendant-petitioner to get the original vouchers produced in Court and retained there till such time the same are examined by a Document/Handwriting Expert in accordance with law.

September 15th, 2006.

**(P.S.PATWALIA)
JUDGE**